
INFORMATION PACKAGE

FOR

PRO SE APPELLANTS/PETITIONERS

THIS INFORMATION PACKET HAS BEEN PREPARED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT TO ASSIST YOU IN PRESENTING YOUR APPEAL TO THE JUDGES OF THIS COURT. PLEASE READ **ALL** THE INFORMATION CAREFULLY **BEFORE** YOU PREPARE YOUR CASE.

YOU **MUST** KEEP A COPY OF ALL DOCUMENTS YOU SEND TO THIS COURT FOR YOUR PERSONAL RECORDS.

YOUR APPEAL HAS BEEN ASSIGNED A COURT OF APPEALS DOCKET NUMBER. YOU **MUST** INCLUDE THIS NUMBER ON ALL CORRESPONDENCE TO THE COURT.

IF YOU MOVE OR YOUR MAILING ADDRESS CHANGES, YOU MUST NOTIFY THE COURT **IN WRITING** IMMEDIATELY. IF YOU DO NOT, YOU MAY NOT RECEIVE IMPORTANT PAPERS FROM THE COURT NOTIFYING YOU OF DEADLINES OR DECISIONS. IF YOU DO NOT NOTIFY US OF YOUR ADDRESS CHANGE AND YOU MISS A FILING DEADLINE AS A RESULT, YOUR APPEAL COULD BE DISMISSED WITHOUT FURTHER NOTICE.

WHEN FILING DOCUMENTS, YOU MUST USE PAPERS AND INKS THAT WILL BE LEGIBLE WHEN THEY ARRIVE AT THIS COURT. FOR THIS REASON, DO **NOT** USE TISSUE PAPER FOR ANY DOCUMENTS YOU FILE WITH THIS COURT. IF THE DOCUMENTS CANNOT BE READ, THEY WILL **NOT** BE PROCESSED.

Revised 10/29/2003

YOUR APPEAL - A CHECKLIST

_____ COURT CLERK ASSIGNS YOU A DOCKET NUMBER AND SENDS YOU THIS PACKAGE OF INFORMATION. **YOU MUST INCLUDE THE DOCKET NUMBER ON ALL FILINGS AND CORRESPONDENCE YOU SEND TO THIS COURT!** IN THIS PACKAGE YOU WILL FIND:

_____ A **TIME SCHEDULE ORDER** - This tells you when certain papers are due. It is VERY important.

_____ A **SAMPLE CERTIFICATE OF SERVICE**. You **MUST** send a copy of ALL documents that you file with this court to counsel for the opponent, if any, and you must include a statement to this court telling us that you did so. You may duplicate this form and fill it out and send it with EACH document you file with this court.

_____ **AN INFORMAL BRIEF FORM.**

_____ YOU MUST NOTIFY THE COURT IN WRITING OF ANY CHANGE OF ADDRESS. 9TH CIR. R. 46-3.

_____ YOU MUST PAY YOUR FILING FEE. IF YOU CANNOT PAY YOUR FEE AND WISH FOR THE FEE TO BE WAIVED, TURN TO PAGE 3 FOR INSTRUCTIONS ON FILING A MOTION TO PROCEED IN FORMA PAUPERIS. IF YOUR MOTION IS DENIED AND YOU DO NOT PAY THE FEES, YOUR APPEAL WILL BE DISMISSED.

_____ YOU MUST FILE YOUR OPENING BRIEF AND EXCERPTS OF RECORD BY THE DATE STATED ON THE **TIME SCHEDULE ORDER**.

_____ IF YOU WISH TO FILE A REPLY TO YOUR OPPONENT'S BRIEF, YOU MUST DO SO WITHIN 14 DAYS OF THE DATE OF SERVICE OF THE OPPONENT'S ANSWERING BRIEF.

_____ IF YOU ARE THE APPELLANT IN AN APPEAL FROM AN ACTION FILED PURSUANT TO 28 U.S.C. § 2254 OR § 2255, YOU MUST OBTAIN A CERTIFICATE OF APPEALABILITY AS TO ANY ISSUES YOU WISH TO RAISE IN YOUR BRIEFS. IF THE DISTRICT COURT HAS DENIED A CERTIFICATE OR GRANTED

IT ONLY AS TO CERTAIN ISSUES, YOU MUST SEEK A CERTIFICATE IN THIS COURT AS TO ANY UNCERTIFIED ISSUES PRIOR TO BRIEFING. SEE 9TH CIR. R. 22-1(d). SEE PAGE 4 FOR MORE DETAILS.

_____ ONCE ALL THE BRIEFS ARE FILED, THE CASE WILL BE CONSIDERED BY A PANEL OF JUDGES. THE JUDGES MAY DECIDE THE CASE BASED ON THE WRITTEN BRIEFS, OR THEY MAY REQUEST ORAL ARGUMENT. IF ORAL ARGUMENT IS NOT SCHEDULED, YOU WILL BE NOTIFIED AND MAY REQUEST ORAL ARGUMENT. THE JUDGES DO NOT HAVE TO GRANT YOUR REQUEST. SEE FED. R. APP. P. 34(a). THE JUDGES MAY DECIDE THE CASE BEFORE ALL OF THE BRIEFS HAVE BEEN FILED, BUT YOU WILL BE GIVEN AN OPPORTUNITY TO TELL THE COURT WHY THE CASE SHOULD NOT BE SUMMARILY DECIDED PRIOR TO BRIEFING. SEE 9TH CIR. R. 3-6.

_____ A WRITTEN MEMO OR ORDER WILL BE SENT TO YOU TELLING YOU THE JUDGES' DECISION.

I. THE COURT OF APPEALS

The Court of Appeals reviews final decisions of the U.S. District Court and certain federal agencies. The court looks at the district court or administrative record in the case and the briefs of the parties to see if there are any constitutional, legal, or factual mistakes. NO new evidence or testimony can be presented in this court.

II. THE FEDERAL RULES

You must follow the Federal Rules of Appellate Procedure (FRAP) and the Ninth Circuit Rules. Make sure you follow the actual language of the rules. The Federal Rules are available in most law libraries. If you would like a copy of the Ninth Circuit Rules, free of charge, please send a written request to the Clerk's office and one will be sent to you. Please include a return mailing label with your address on it with your request.

III. PAYMENT OF FEES

The docketing and filing fees for an appeal are paid in the district court or tax court when the notice of appeal is filed. Fees in agency cases or in appeals from the Bankruptcy Appellate Panel (BAP) are paid directly to the Clerk, U.S. Court of Appeals.

If you cannot afford to pay the fees, you may:

1. File a motion to proceed without payment of fees. This motion is called a Motion to Proceed In Forma Pauperis. You must file this motion in the district court together with a financial affidavit, including a statement by you swearing under penalty of perjury that you do not have enough money or other assets to pay the fees.
2. If the district court denies your motion, you must either pay the fees or file a renewed motion in the Ninth Circuit. If this court determines that your appeal is without legal or factual merit, it may deny your motion. If the motion is denied, you **MUST** pay the fees. See FRAP 24.
3. If you do not pay your filing fees after a motion to proceed in forma pauperis is denied in this court, your appeal will be dismissed. See 9th Cir. R. 42-1.
4. If your motion to proceed in forma pauperis is GRANTED, you do not need to pay the filing fees, unless you are a prisoner in a civil (non-habeas corpus)

appeal, in which case you will be required to pay the entire \$255 docketing and filing fees when funds exist in your prison account. See 28 U.S.C. § 1915(b). If you are incarcerated, the court will notify you of your obligations under this statute and will require you to complete and return an authorization form to allow prison officials to deduct the funds from your account on a monthly basis. In addition, all litigants proceeding in forma pauperis still have to pay for other expenses of their appeal. These include copying, mailing, or costs you may have to pay the other party if you lose the appeal. See FRAP 39.

NOTE: If you were permitted to proceed in forma pauperis in the district court and that status has not been revoked, you need not seek such status in this court, whether or not you are incarcerated. See FRAP 24(a). You will still be obliged to pay the fees under 28 U.S.C. § 1915(b) in civil appeals if you are incarcerated.

IV. CERTIFICATE OF APPEALABILITY

In all appeals from proceedings filed pursuant to 28 U.S.C. § 2254 or § 2255, the petitioner must obtain a certificate of appealability in order to seek review in the Circuit Court. See Fed. R. App. P. 22(b). If the district court issues a certificate only as to certain issues, you must request a broader certificate in this court in writing within 35 days from entry of the district court's order. In any event, your appeal is limited to the issues certified by the district court and/or by this court. 9th Cir. R. 22-1(d).

V. TRANSCRIPT DESIGNATION AND ORDERING FORM

Whether or not you are incarcerated, if you want to quote matters that were discussed during district court hearings to support what you tell this court in your brief, you must order a transcript of the hearing and pay the court reporter to prepare the transcript (or file a motion for transcripts at government expense). You must fill out the transcript designation form and include the date of the hearing and the name of the reporter that reported the hearing. A copy of the designation **MUST** be sent to the reporter and to the district court, **AND** must be served on opposing counsel. The **TIME SCHEDULE ORDER** gives you the date by which you must designate the transcript. Forms are available from the district court clerk. You are not required to designate pleadings or orders that were filed in the district court unless you are appealing an order issued by the Bankruptcy Appellate Panel.

VI. TRANSCRIPTS AT GOVERNMENT EXPENSE

In Forma Pauperis status in civil appeals does NOT automatically entitle you to transcripts at government expense, unless you are appealing from the denial of a petition filed pursuant to 28 U.S.C. § 2254 or § 2241. You must file a separate motion for transcripts in the district court. If the motion is denied, you can file the same motion in the Ninth Circuit. See 28 U.S.C. § 753(f).

You may request transcripts at government expense only for hearings conducted in the district court in the proceeding that generated your appeal; the court will not authorize payment for production of transcripts of hearings that were held in other courts or other proceedings.

VII. APPOINTMENT OF COUNSEL

The situations in which the court may appoint counsel or request the services of volunteer counsel in civil appeals are VERY LIMITED. To request the court to appoint counsel, you should file a motion for the appointment of counsel stating reasons why counsel is necessary and why you cannot afford an attorney. Remember to serve counsel for the opposing party with a copy of the motion. You must have in forma pauperis status to request appointment of counsel. See 28 U.S.C. § 1915(e)(1).

In direct criminal appeals, if you have in forma pauperis status or can show that you are indigent, you are entitled to appointed counsel. However, you MUST ASK that counsel be appointed by filing a Motion for Appointment of Counsel.

VIII. BRIEF AND EXCERPTS OF RECORD

Your appeal was assigned a court of appeals docket number. Any briefs or other correspondence from you should include this number.

The TIME SCHEDULE ORDER tells you when you must file particular papers. Your brief is the written argument of your appeal. You will file the first brief, called the Opening Brief. The other side is given a chance to file a brief answering your arguments. You will have an opportunity to reply to their brief. The TIME SCHEDULE ORDER will tell you when your Opening and Reply Briefs are due. Briefing in certain appeals may be expedited, giving shorter deadlines to both parties. See 9th Cir. R. 3-3 (appeals from the denial of preliminary injunctive relief).

All briefs should include:

- (a) A statement of the facts of your case.
- (b) What the district court or agency decided.

- (c) The issues you present on appeal.
- (d) The LEGAL arguments you wish to present.
- (e) A statement telling this court what you want us to do on appeal - reverse the district court, remand the case back to the district court, or modify the district court opinion and WHY.
- (f) Your signature - all briefs must be signed by each pro se appellant.

Please read FRAP 28 and 32 and 9TH CIR. R. 28-1, 28-2, 28-4, 32-1, 32-3 and 32-5 for the exact requirements of the brief.

You must file the **original and 15** copies of your briefs with the court, unless you have been granted in forma pauperis status. If you have been granted in forma pauperis status, you must file the original and 7 copies. See 9th Cir. R. 31-1. You must also send **2** copies of your brief to counsel for EACH opposing party and you must file a certificate of service with each copy as well.

NOTE: Because you are appearing without the help of an attorney, you may file the informal brief included in this package. If you choose instead to file your own brief, it must meet all of the requirements of the federal rules, and must include the certificate of compliance required by 9th Cir. R. 32-1. If it does not, we may return it to you for correction, which will delay the decision in your case. If you use the attached informal brief form, however, your opening and reply briefs need not comply with the technical requirements of the Rules. See 9th Cir. R. 28-1(b), 32-5. You may add additional pages to the form, up to a total of 40 double-spaced pages.

NOTE: The court will DISMISS your appeal if you do not file your brief and excerpts of record when they are due!

NOTE: Your briefs are considered filed as of the date you mail them to the court if you use first class mail. See FRAP 25(a).

IX. EXCERPTS OF RECORD

Unless you are incarcerated and proceeding in forma pauperis, you must also file the EXCERPTS OF RECORD when you file your brief. See 9th Cir. R. 30-1, 24-1. These are a collection of the important documents which were filed in the district court or agency. YOU must file these AT THE SAME TIME that you file your brief with the court. The excerpts of record MUST include:

1. The notice of appeal
2. The trial court docket sheet

3. The indictment in criminal cases
4. The judgment or order you appealed from
5. Any other orders or rulings you want reviewed
6. The final pre-trial order, if there was one, or
7. The final complaint and answer filed in district court
8. Any findings of fact, opinions, or conclusions of law from the district court
9. Any jury instruction given or refused that presents an issue on appeal.

Do NOT include briefs, motions or other memoranda of law filed in the district court. Do NOT include any documents that were not presented to the district court or agency as part of the record on appeal.

The excerpt of record may also include:

1. Transcripts
2. Exhibits - If an issue raised on appeal is based on a written exhibit, the relevant parts of the exhibit should be included.

You must file **5** copies of the excerpts of record, and you must send one copy of the excerpts of record to the opposing party. If you use the informal brief form to file your opening brief and you attach the documents comprising the excerpts of record to your brief as described on the first page of the form, you need not file additional excerpts of record separately from your brief. See 9th Cir. R. 30-1.5. If you cannot obtain the necessary documents for the excerpts of record, or if for some reason you cannot file the documents you have, you may file a motion in this court for permission to waive the excerpts of record requirement. The court may or may not waive this requirement. Prisoners proceeding pro se may request the district court to send them the documents comprising the excerpts of record. See 9th Cir. R. 30-3.

X. EXTENSIONS OF TIME

If you need an extension of time in which to file your brief and excerpts of record, you may request one extension of no more than 14 days by telephone. The telephone number for requesting telephonic extensions is (415) 556-9768. Once you receive a telephonic extension of time, no further extension of time is available absent extraordinary circumstances. You must give the other party notice by

telephone that you are requesting an extension BEFORE you call the court. See 9th Cir. R. 31-2.2(a). If you need more than a 14-day extension, or have already been granted one or more extensions to file the brief, you must file a written motion for extension of time in which to file your brief. This motion must be filed at least SEVEN days before the due date for your brief. Your motion must meet the requirements of 9th Cir. R. 31-2.2(b).

XI. MOTIONS

Any motions filed while your appeal/petition is pending must clearly identify the relief sought and the legal grounds for such relief. You must file an original and 4 copies of any motion and you must serve a copy of the motion on all counsel for opposing parties and file a certificate of service saying you have done so. 9th Cir. R. 27-1.

Any motion for reconsideration or clarification of an order disposing of a motion or otherwise entered by a motions panel prior to the completion of briefing must be filed within 14 days (or 28 days if you are incarcerated and proceeding pro se). See 9th Cir. R. 27-7, 27-10.

XI. PETITION FOR REHEARING

If you think this court's final decision on the merits of your case was wrong you may file a petition for rehearing in this court within 14 days of Entry of Judgment. See FRAP 35 and 40; 9th Cir. R. 35 and 40. Unless you filed an informal opening brief on the form provided with this packet, your petition for rehearing must comply with the technical form requirements of Fed. R. App. P. 32. 9th Cir. R. 32-5, 40-1. You must present new facts or legal bases not already presented in your brief. After this court either denies your timely petition for rehearing or issues a new judgment upon rehearing in your case, you may file a petition for writ of certiorari in the United States Supreme Court. If you do not file a petition for rehearing in this Court, you may instead file a petition for a writ of certiorari in the United States Supreme Court. (See the Supreme Court Rules for details on how to proceed in the Supreme Court.) **Remember** that you must have a LEGAL basis to support your belief that this court's final decision was incorrect; it is not enough to simply disagree with the outcome.

CERTIFICATE OF SERVICE

Case Name: _____ v. _____

Case No.: _____

IMPORTANT: You must send a copy of ALL documents filed with the court and any attachments to counsel for ALL parties in this case. You must also file a certificate of service with this court telling us that you have done so. You may use this certificate of service as a master copy, and fill in the title of the document you are filing. Please list below the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below. You must attach a copy of the certificate of service to each of the copies and the copy you file with the court.

I certify that a copy of the _____

(Name of document you are filing (i.e., opening
brief, motion, etc.)

and any attachments was served, either in person or by mail, on the persons listed below.

Signature

Notary NOT required

Name

Address

Date Served